

*U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON THE POSTAL SERVICE*

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**SUMMARY OF CHAIRMAN McHUGH'S AMENDMENT
IN THE NATURE OF A SUBSTITUTE TO H.R. 22**

Overview

H.R. 22 is legislation that would fundamentally modernize and reform the nation's postal laws for the first time since 1970. The bill was originally introduced on June 25, 1996. In late February 1998, Chairman McHugh announced that the Subcommittee was actively soliciting written comments through early April on proposed revisions to H.R. 22. The 47 comments subsequently received were shared with all Subcommittee Members for review, and they were posted on the Subcommittee's web page for public examination.

Through this process, the Subcommittee has attempted to ensure that the public and all postal stakeholders have had repeated opportunities to provide input on the revisions as proposed last December. The revisions were the result of feedback from more than 40 witnesses who testified in five hearings on the legislation, as well as input in more than a dozen hearings held by the Subcommittee with approximately 60 witnesses on the challenges facing the postal system and the need to modernize the nation's postal laws.

After carefully evaluating all of the comments received, Chairman McHugh released the new legislative language on September 2, which was also posted on the Subcommittee's web page. The Subcommittee will mark-up H.R. 22 on Wednesday, September 23, at 10 a.m. in room 2154 of the Rayburn Building.

Background to H.R. 22

The purpose of H.R. 22 is to improve and update the laws that shape the operation of the nation's postal system, a system that not only includes the U.S. Postal Service itself, but directly impacts private express companies, hundreds of regional and local delivery services, and small businesses alike. Each citizen, whether at home or at work, depends upon the efficient and effective operation of the American postal delivery system.

Today, the basic charter for this industry is the Postal Reorganization Act of 1970, codified in title 39, U.S. Code. The 1970 act abolished the Post Office Department, an executive department within the Cabinet of the President, and created the U.S. Postal Service. The Postal Service is an independent agency that is directed by a Board of Governors, an 11-member committee consisting of nine "Governors" chosen by the President for staggered 9-year terms, a Postmaster General, and a Deputy Postmaster General selected by the Governors. The Postal Service itself determines the types and level of postal services it will provide and how much total revenue it will need to provide these services. The Postal Service also issues regulations that purport to define what types of services are within the

scope of the statutory postal monopoly and what types of services may be offered by private companies.

Before the Postal Service introduces new rates or new types of services, it must request an opinion from a second agency, the Postal Rate Commission. The Postal Rate Commission is a five-member agency whose members are appointed by the President. The Postal Rate Commission holds public hearings on the fairness of differences between postage rates and can recommend modifications that will reduce unfair or unreasonable discrimination, a concept defined by several statutory criteria. Because even slight changes in rates can involve very large sums of money, the Postal Rate Commission's review of changes in rates or classifications usually involves a complex and contentious administrative litigation lasting up to 10 months.

Many aspects of this system have led to calls for modernization of the postal laws, which H.R. 22 reflects to varying degrees.

Since the early 1990s, the Postal Service has argued that it needs more commercial flexibility to respond to increased competition from private express companies, new forms of communication, and changing business practices. The Postal Service would like to be able to change rates without the costs and delays associated with the current style of PRC review. It would also like to offer rates that are better tailored to the needs of large business customers and to enter the new types of commercial activities that are replacing the business of delivering traditional letters. Many large customers of the Postal Service agree as to the necessity of these changes, while many smaller customers are more skeptical. However, all agree on the need to maintain a vibrant Postal Service that can provide universal service at a reasonable cost to all areas of the United States.

Meanwhile, captive customers of the Postal Service's monopoly as well as private companies who compete with the Service have also been calling for reform. They suggest that the Postal Service's increasing commercial emphasis on competitive services requires clearer statutory guidelines as to what is fair competition for a public monopolist. Many small customers of the Postal Service – who have no other practical alternative for the delivery of their letters by law – emphasize that the Postal Service can compete with the private sector while loading a disproportionate share of its overhead costs onto their postage rates. Likewise, many private companies argue that it is inappropriate for a government agency to compete in a private market while it also 1) adopts regulations (such as the scope of the mail monopoly) that determine the rules of competition, 2) operates with an exemption from laws that prohibit fraudulent business practices (such as the antitrust and unfair competition laws), and 3) loads its overhead costs in monopoly customers' rates. Some customers, competitors, and economists have suggested that the Postal Service, as a government entity, should be excluded from the competitive market altogether and wound down as changing technology and new business practices reduce the need for a governmental letter delivery establishment. H.R. 22 offers a more moderate course: to allow the Postal

Service to compete in all markets, provided it does so on the same terms and conditions as faced by private companies.

A third impetus for postal legislation is the fact that other developed countries, facing the same problem of how to modernize their postal systems in light of changing technologies, have concluded that the time has come to reform their postal laws. After a lo-year debate, the European Union has adopted legislation that will limit the postal monopolies in all 15 member states to services priced at 5 times the stamp price or less, or when conveying items weighing 12.5 ounces or less. Sweden and Germany have enacted legislation abolishing their postal monopolies; New Zealand is not far behind. The Netherlands has privatized the majority interest in its post office and is considering abolition of the postal monopoly. Australia and the United Kingdom are considering introducing more competition and commercial flexibility into their postal systems. All countries have moved forward with the same commitment to preserving universal postal service in their countries that is demanded here in the United States.

Amendment in the Nature of a Substitute

The following title-by-title summary provides an overview of how Chairman McHugh's amendment in the nature of a substitute to H.R. 22 would modify the postal laws. The entire amendment and a sectional analysis were publicly issued by the Subcommittee on September 2, which included posting on the Subcommittee's website at that time. Copies are also available from the Subcommittee's office in B-349C Rayburn. The Subcommittee will consider the Chairman's amendment in the nature of a substitute in a markup session on September 23.

Title-by-Title Summary of Chairman McHugh's Amendment in the Nature of a Substitute to H.R. 22

Title I renames the Board of Governors as the Board of Directors, and adds "and Chief Executive Officer" to the title of Postmaster General, thus codifying current practice. Additionally, it renames the Postal Rate Commission as the Postal Regulatory Commission (PRC), in recognition of its greater role and responsibility for protecting the public interest.

Title II establishes a new postal rate-setting process. It divides postal products into two categories, the "noncompetitive" and the "competitive" mail categories. The first will include those products such as first and other classes of mail for which there are few practical or legal alternatives to the Postal Service. The latter will include those postal products facing full competition within the marketplace. The specific criteria for each category reflect the Federal Communications Commission's approach to defining "dominant" services for the purpose of regulation.

Those products in the noncompetitive mail category will have rates established using a price "cap" regimen, based upon the Consumer Price Index less a "productivity offset," which will be determined by the PRC every five years. Once the cap is established, prices may be adjusted on an annual basis by the Board of the Postal Service. A price cap system creates real incentives for cost economy and efficiency by allowing the Postal Service to reasonably change prices without the explicit permission of the PRC, and thereby earn the profits generated as long as rates remain within the PRC imposed caps. In contrast, the current rate-setting process provides the Postal Service with little or no incentive to control its costs because all costs are ultimately passed through to the consumer, regardless of how efficiently or inefficiently the Service operates. For the past 15 years, price cap regulation has been successfully employed to regulate a number of industries in the U.S. and abroad, including telephone, gas, electric, and water utilities, and foreign postal administrations.

Products contained in the competitive mail category will be priced by the Board according to market conditions, as long as 1) each of these products are priced to cover their costs, and 2) the competitive products *collectively* make a contribution to the overall overhead of the Postal Service in at least an equal percentage to the contribution made by all noncompetitive and competitive products combined. The Postal Service will be required to track revenues and expenditures of competitive products by way of a separate new account, "the Postal Service Competitive Products Fund." The Postal Service will have substantial freedom to manage the fund, but the fund is precluded from access to federal financing sources and does not have the full faith and credit of the United States.

For experimental products, the Postal Service will have a period of two years -- with the possibility of extension to a third year with PRC approval -- to market test experimental products and to formulate the data necessary to make decisions on the permanent offering of such products. The Postal Service will be annually audited, as well as reviewed upon complaint, by the PRC to ensure that prices are set in accordance with the law and that delivery and performance standards are being met. The PRC must report at least every 6 years on the operation of the ratemaking system with recommendations for any legislative or other measures necessary to improve it. In this way, a formal and regular review process is established to consider any necessary modifications to service baskets, pricing bands, and other design features of the price cap plan.

Title II defines both "postal" and "nonpostal" products and services, and authorizes the Postal Service to introduce new, unregulated, nonpostal products if produced by a private law Corporation owned by the Postal Service and funded from the Competitive Products Fund. From a legal standpoint, the Corporation is not "the Postal Service." Funds available to the Corporation are limited to funds invested from the Competitive Products Fund and loans obtained on the credit of the Corporation itself. The Postal Service is required to include the activities of the Corporation in the annual reports to the PRC to ensure compliance with the firewall established between the Service and the Corporation. Title II also expands the powers of the PRC by providing it with the ability to subpoena information

and includes direction on how to manage proprietary information it may receive. Title II institutes qualification requirements for the Commissioners and Directors in light of their enhanced authorities and responsibilities, and authorizes an appropriation for the PRC to greater ensure its independence.

Title III requires equal application and impartial administration of laws to the Postal Service, particularly in regard to unfair competition. For example, it extends the application of antitrust laws both to competitive and noncompetitive products not covered by the postal monopoly, and applies federal prohibitions against fraudulent business practices and trademark infringement to all postal products. Title III makes the Secretary of State responsible for U.S. foreign policy regarding the postal and delivery services sector, and prohibits the Secretary from concluding agreements with other nations that give preference to any particular entity in the postal and delivery system. The Postal Service is authorized to enter into agreements and contracts as it deems appropriate for international postal services, but contracts with foreign governments must be solely contractual in nature and not purport to be international law. Title III permanently authorizes the Postal Service to employ postal police officers, and clarifies the appeal deadline for post office closures.

Title IV makes technical, conforming amendments related to the budget and appropriations.

Title V, among other provisions such as expanding the Postal Service's flexibility to contract for surface and air transportation of mail, clarifies that a "letter" may be carried out of the mails under the criteria of existing law, or when the amount paid for private carriage is at least 6 times the price of the first ounce of the single piece first-class stamp, or when the letter weighs more than 12 and a half ounces. The Department of Justice has stated its support for limiting the scope of the statutory monopoly with a bright-line test for identifying products falling within it, and such an approach is modeled on, but less restrictive than the European Union (EU) law, which limits the postal monopolies in all EU countries to only 5 times the stamp price or 350 grams.

Title VI mandates several studies regarding employee-management relations, universal service, and equal application of laws.

Title VII provides for a designated federal entity Inspector General for the PRC in recognition of its increased responsibility and authority. In addition, the title requires the Inspector General of the Postal Service to be appointed by the President and makes several related modifications.

Title VIII, among other similar provisions, increases the criminal penalties for the sending of unsolicited sexually oriented advertising, hazardous, and controlled substances via the mail. It also increases the penalties for the robbery or burglary of postal property and makes the stalking of postal and federal employees a felony.